

BILL POSEY
16TH DISTRICT, FLORIDA

www.posey.house.gov

COMMITTEE:
FINANCIAL SERVICES
SUBCOMMITTEES:
CAPITAL MARKETS

Congress of the United States

WASHINGTON OFFICE:
132 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3671
FAX: (202) 225-3518

House of Representatives

DOMESTIC AND
INTERNATIONAL MONETARY POLICY

Washington, DC 20515

MEMBER OF:
HOUSE AEROSPACE CAUCUS
REPUBLICAN STUDY COMMITTEE

DISTRICT OFFICE:
2725 JUDGE FRAN JAMIESON WAY, BLDG. C
MELBOURNE, FL 32940
(321) 632-1776
FAX: (321) 638-8585

August 29, 2011

Secretary of Labor Hilda L. Solis
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis,

In October 2010, the Department of Labor proposed an expanded definition of a "fiduciary" under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. This new definition includes anyone who receives compensation as a result of providing individualized investment advice to employee benefit plans, plan participants or Individual Retirement Arrangement (IRA) owners.

Under the current regulations, which have been in place since 1975, persons giving investment advice to an employee benefit plan who have no discretionary control over such plan become subject to the ERISA fiduciary standard only if they satisfy each element of a five-part test. The proposed definition reverses this policy by presuming that any person who provides investment information to a plan, participants or IRA owners is a fiduciary unless an exception applies.

The proposed regulation raises a number of concerns. It applies the ERISA fiduciary standard to advice given to IRA owners, yet IRAs are not governed by ERISA. The proposal excludes investment sellers from fiduciary status if the recipient of the advice knows that the advisor has an "adverse" interest, but the exemption is vague and therefore unreliable. Furthermore, while a "seller's exception" may exclude many commission-based advisors from the proposed regulation, serious questions remain as to how broad or workable this exception may be.

Fiduciary standards protect consumers and hold financial advisors accountable for their actions, but they must be applied consistently between regulatory agencies to be effective. The proposed regulation is inconsistent with Securities and Exchange Commission regulations governing fiduciaries, and will result in fewer choices and increased costs for investors.

Given these concerns, I ask that the Department withdraw the proposed regulation or, at the very least, take no further action until the Securities and Exchange Commission has completed new regulations that would apply to all persons licensed to sell securities or provide investment advice, as authorized by the Dodd-Frank Wall Street Reform Act.

Thank you for your consideration with regard to this matter.

Sincerely,


Bill Posey
Member of Congress

RECEIVED
2011 AUG 30 PM 4: 08
EXEC. SECRETARIAT
OSEC-DOL
DEPT. OF LABOR
WASH. D.C.